

The above rule is similar to the one laid down by the court in *In re Guruswami* (1940) that "the court must of course fully convinced of the truth of the statement and naturally it could not be fully convinced if there were anything in the other evidence or in the surrounding circumstances to raise suspicion as to its credibility." Therefore, the general rule that uncorroborated dying declaration may form a sole basis of conviction is subject to a cautionary proviso that such statements must be scrutinized in the physical and surrounding circumstances of each case. This cautionary proviso is important to be resorted to in majority of the cases because of the fact that "the accused...had no opportunity of testing the veracity of the statement by cross-examination" (M. Anwar 1984).

There is an important question often raised with respect to dying declarations in general that are such statements a weaker type of evidence? There are cases (e.g. Muhammad Sulaman 1997) in which it has been observed that it is a weaker type of evidence than the one which is adduced in a court. The reason extended for such a preference is that the former statement could not be subjected to cross-examination. This question has extensively been debated by judges of Supreme Court (Zarif Khan 1977). The Bench was consisted of Justices Anwarul Haq, Muhammad Akram and Dorab Patel. It was a majority decision by Justice Anwarul Haq and Muhammad Akram on the one side, while Justice Dorab Patel on the other. Justice Durab was of the opinion that dying declaration is a weaker type of evidence. He relied on observations made by Beaumont C.J. in *Emperor* (1933). He also quoted passages from Woodroffe and Taylor for substantiating his contention (Zarif Khan 1977 at 619-20).

In the instant case, Justice Anwarul Haq strongly denounced expressions attributing any weakness to evidentiary value of a dying declaration. He made it clear that when the Legislature has incorporated dying declaration as relevant piece of evidence then there was no justification to lay a general rule as to its weakness as an evidence owing to the reason that the accused did not have an opportunity to cross-examine the declarant. He observed that "the sanctity attached to such statement by the statute should be respected unless there are clear circumstances brought out in the evidence to show that a dying declaration is not reliable for any reason" (Zarif Khan 1977 at 627). The same is the stance of Indian superior courts that no hard and fast rule can be laid down as to general weakness of a dying declaration (Khushal Rao 1958).

There are decisions to the effect that a dying declaration has a degree of sanctity under the law because it is made by the dying man who is suffering under immediate apprehension of separation of his ties with the mundane affairs, so he would not tell lie to implicate the innocent person (Jamait Ali Shah 1993). It is important to observe that Article 46 which deals with dying declarations is not based on such assumptions. The relevancy of a dying declaration depends on the premise that in the circumstances no better evidence can be provided than the statement of a dying man. Thus, the courts ought to be cautious while attributing unquestioned sanctity to dying declarations on any basis except their intrinsic veracity. It was rightly observed by the Lahore High Court in *Mian Khan* (1954) that "in one case a statement, even though not made by a person under expectation of death, may have very great weight, while in another even a statement made by a person who is at death's door may not be very convincing".